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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 22, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUE980602

ROBERT A. WINNEY D/B/A
THE WATERWORKS COMPANY OF
FRANKLIN COUNTY,
Defendant

ORDER MAKING FINDINGS, DIRECTING
REFUNDS, AND SUSPENDING JUDGMENT

By Rule to Show Cause entered September 11, 1998, Robert A. Winney d/b/a The Waterworks Company of Franklin County ("Company") was ordered to appear before the State Corporation Commission on December 3, 1998, and to show why the Commission should not impose fines or punish for contempt for failure to make certain refunds and to apply prescribed rates and charges. A return made by the Honorable W. Q. Overton, Sheriff of Franklin County, showed that Robert A. Winney d/b/a The Waterworks Company of Franklin County was personally served with a copy of the rule to show cause and had notice of this proceeding. The Company did not file an answer as authorized by the rule to show cause.

The Commission heard this matter on December 3, 1998. Robert A. Winney d/b/a the Waterworks Company of Franklin County

did not appear. The Commission received testimony and exhibits from its Staff concerning violations alleged in the rule to show cause.

Based upon the record developed at the hearing, the Commission finds that the Company has not refunded certain sums as ordered and has not applied prescribed rates and charges. By Interim Order issued February 27, 1998, in Case No. PUE970119, Application of Robert A. Winney d/b/a The Waterworks Company of Franklin County, for a certificate of public convenience and necessity authorizing the furnishing of water, the Commission prescribed a quarterly rate for service provided on or after February 27, 1998, and an annual availability charge. The Company was ordered to make a refund of \$35.33 to customers who had paid, on or before January 15, 1998, an annual availability charge of \$100.00. The refund was originally to be made by March 18, 1998, but the date was later extended to July 15, 1998. We prescribed a rate of \$67.50 per quarter for water service and determined that customers were due a pro rata refund of \$11.98 for the first quarter of 1998. Rather than direct a cash refund, the Commission prescribed a one-time reduction in the quarterly rate from \$67.50 to \$55.52 for the second quarter of 1998 payable April 1. The quarterly rate thereafter would be \$67.50 until changed as provided by law.

The record shows that the refunds to customers paying an annual availability charge in January 1998 have not been paid as ordered. It appears that the Company proposes to credit customers paying an annual availability charge due in January 1999 with the amount of the refund. Such action, if it is in fact contemplated by the Company, is contrary to our orders.

With regard to application of the prescribed rates for water service, the record shows that the Company has, in some instances, failed to charge the prescribed rate. In February 1998, the Company applied for an increase in rates which was suspended and assigned case number PUE980057. Although the higher quarterly rate was suspended by order of February 20, 1998, the Company sent some bills payable April 1, 1998, at the higher rate. This action was contrary to our order suspending the proposed increase in rate, which carries the force of law.

The record also shows that the Waterworks Company of Franklin did not send timely bills to some customers so that payments could be made for the third quarter on July 1, 1998, and for the fourth quarter on October 1, 1998. In mid-November, the Company billed these customers for two quarters and added late charges. The Commission finds that application of a late charge in these circumstances is contrary to the Company's tariff and to our policies for the regulation of public utilities. While utilities, including the Waterworks Company of

Franklin, may impose a late charge as provided by their tariff and by applicable statutes and regulations, a late charge may not be applied in the absence of proper billing by the utility.

Upon consideration of the record, the Commission finds that Robert A. Winney d/b/a The Waterworks Company of Franklin County has failed or refused to comply with Commission orders prescribing rates for service and directing the making of a refund. The Company's failure or refusal to obey the Commission's orders has continued for at least ten days. Accordingly, the Commission finds that Robert A. Winney d/b/a the Waterworks Company of Franklin County should be fined \$2,500 for disobedience of Commission orders. This fine shall be imposed on Robert A. Winney personally, and this amount shall not be recovered through rates, charges or fees for service. The fine shall bear interest at the rate set by law from the date fixed by order of the Commission.

The Commission will, however, suspend imposition of this fine on certain conditions. First, the Waterworks Company of Franklin must make a refund by check to customers who paid the availability charge in 1998. The refund may not be made by crediting any future bill. Further, the Company must make a refund to any water service customer who paid in excess of \$290.52 for water service for the first, second, third, and fourth quarters of 1998. Any refund due may not be made by a

credit to any bill. These refunds shall be made in accordance with the directions we set out below. If the Company does not comply with this order, the Commission may enter judgment after notice to the Company

Accordingly, IT IS ORDERED THAT:

(1) Robert A. Winney d/b/a The Waterworks Company of Franklin County be fined \$2,500 for failing or refusing to obey an order of the State Corporation Commission as provided by § 12.1-33 of the Code of Virginia.

(2) The fine imposed in (1) above be suspended upon satisfaction of the following conditions: (a) on or before February 5, 1999, the Company shall refund by check \$35.33 to all customers paying an availability charge in January, 1998; (b) on or before February 5, 1999, the Company shall refund the excess paid by any customer whose total payments for service for the first, second, third, and fourth quarters of 1998 exceeded \$290.52 for any reason; (c) on or before February 17, 1999, the Company shall file with the Clerk of the Commission, c/o Document Control Center, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218-2118, a document setting out the name and address of each customer paid a refund; the amount and check number of the refund check made payable to each customer; and the date of the refund check.

(3) On or before January 15, 1999, the Company shall serve a copy of this order by first class mail, postage pre-paid on all customers.

(4) On or before January 22, 1999, the Company shall file with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, a certificate stating the date of mailing of a copy of this order and the name and address of each customer mailed a copy.

(5) This matter shall be continued.